

1 S.250

2 Introduced by Senator Ram Hinsdale

3 Referred to Committee on

4 Date:

5 Subject: Public safety; police misconduct; accountability

6 Statement of purpose of bill as introduced: This bill proposes to provide for
7 greater accountability for law enforcement officers, including the creation of a
8 private right of action against law enforcement officers that prohibits common
9 law and statutory immunities as a defense. This bill also provides specific
10 parameters concerning independent investigations of police misconduct, anti-
11 bias training for law enforcement officers, and the creation of a law
12 enforcement officer database with related disclosures during criminal
13 prosecutions. The bill provides the Office of the Attorney General with
14 authority to investigate complaints of a pattern or practice of discriminatory
15 conduct by a law enforcement agency and initiate civil enforcement
16 proceedings, if necessary.

17 An act relating to enhanced administrative and judicial accountability of
18 law enforcement officers

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 3 V.S.A. § 169 is added to read:

3 § 169. PATTERN OR PRACTICE INVESTIGATION OF LAW

4 ENFORCEMENT AGENCIES

5 (a) As used in this section:

6 (1) “Law enforcement agency” means a municipal police department
7 and its officers or a sheriff’s department and its sheriff and deputies.

8 (2) “Pattern or practice of discriminatory conduct” means repeated,
9 continuing, enduring, or systemic violations of rights, privileges, or immunities
10 guaranteed under the Constitution or laws of the State of Vermont or the
11 United States by a law enforcement agency.

12 (3) “Public record” or “public document” has the same meaning as in 1
13 V.S.A. § 317.

14 (4) “Retaliatory action” has the same meaning as in 3 V.S.A. § 972.

15 (b) The Attorney General, or the Attorney General’s designee, shall
16 investigate complaints of a pattern or practice of discriminatory conduct by a
17 law enforcement agency. Prior to filing a civil action, the Attorney General or
18 designee shall provide notice to the law enforcement agency of any reasonable
19 belief that a pattern or practice of discriminatory conduct has occurred and the
20 factual basis supporting the reasonable belief. The law enforcement agency

1 may respond to the notice at any time within 30 days after the date on which
2 the agency receives the notification.

3 (c) The Attorney General or designee may file a civil action against the law
4 enforcement agency in the Superior Court of proper jurisdiction, for or in the
5 name of the State of Vermont, in accordance with this section:

6 (1) to obtain all appropriate equitable and declaratory relief to eliminate
7 the identified pattern or practice of discriminatory conduct committed by the
8 law enforcement agency if the Attorney General and the law enforcement
9 agency cannot execute an agreement regarding the course of action mutually
10 agreed upon by the Attorney General and the law enforcement agency to cure,
11 change, or eliminate the identified pattern or practice within 60 days after the
12 last day on which the law enforcement agency may respond to the notice
13 pursuant to subsection (b) of this section; or

14 (2) to enforce the terms of any agreement reached by the Attorney
15 General and the law enforcement agency to cure, change, or eliminate the
16 identified pattern or practice of discriminatory conduct.

17 (d) For the purpose of carrying out an investigation pursuant to this section,
18 the Attorney General or designee may issue a subpoena to compel the
19 attendance or testimony of a witness or the production of any relevant
20 evidence, including books, papers, documents, records, photographs,
21 recordings, reports, and tangible objects maintained by the law enforcement

1 agency. If a witness refuses to attend, testify, or produce materials as required
2 by the subpoena, the Attorney General or designee may compel the witness to
3 comply by petition to the Superior Court of proper jurisdiction pursuant to
4 Rule 37 of the Vermont Rules of Civil Procedure.

5 (e) The Attorney General shall issue a public report detailing the findings at
6 the conclusion of the investigation. The report shall articulate whether a
7 pattern or practice of discriminatory conduct exists within the law enforcement
8 agency.

9 (1) An investigation concluding that the law enforcement agency did not
10 engage in a pattern or practice of discriminatory conduct shall detail the
11 underlying reasons for the conclusion in the public report and the investigation
12 shall be closed.

13 (2) An investigation concluding that a pattern or practice of
14 discriminatory conduct could not be substantiated within the law enforcement
15 agency shall detail the underlying reasons for the conclusion in the public
16 report. The investigation shall be closed but shall be archived and may be used
17 as an aggravating factor in any civil action of a subsequent similar pattern or
18 practice of discriminatory conduct by the law enforcement agency that is
19 substantiated.

20 (3) An investigation concluding that the law enforcement agency
21 engaged in a pattern or practice of discriminatory conduct shall articulate the

1 nature of any pattern or practice, identify the underlying systemic deficiencies,
2 and contain the course of action mutually agreed upon by the Attorney General
3 and the law enforcement agency to cure, change, or eliminate the identified
4 pattern or practice or a copy of the civil action filed against the law
5 enforcement agency pursuant to subsection (c) of this section.

6 (f) Notwithstanding the provisions of 1 V.S.A. § 317, the content of any
7 investigation, including the identity of a witness, any procedure, testimony
8 taken, document or other tangible evidence produced, or any answer made
9 under this section is confidential and not subject to disclosure as a public
10 record or public document unless and until the filing of a civil action pursuant
11 to this section, except if:

12 (1) confidentiality is waived by the person upon whom the investigative
13 demand is made;

14 (2) disclosure is authorized by a Superior Court; or

15 (3) disclosure is made by a federal court or federal agency.

16 (g) Any State employee or officer or local employee or officer who
17 discloses a pattern or practice of discriminatory conduct shall be afforded all
18 protections against retaliatory action pursuant to chapter 27, subchapter 4A of
19 this title.

1 Sec. 2. 12 V.S.A. chapter 190 is added to read:

2 CHAPTER 190. PRIVATE RIGHT OF ACTION AGAINST LAW

3 ENFORCEMENT OFFICERS; DEPRIVATION OF STATE RIGHTS

4 § 5607. LIABILITY OF LAW ENFORCEMENT OFFICERS

5 (a) As used in this section:

6 (1) “Law enforcement agency” has the same meaning as in 20 V.S.A.

7 § 2351a.

8 (2) “Law enforcement officer” has the same meaning as in 20 V.S.A.

9 § 2351a.

10 (b) An individual injured or damaged by the commission or omission of
11 any act of a law enforcement officer acting under authority of the State, or
12 within the scope of authority of a law enforcement agency, that violates the
13 individual’s rights guaranteed under a provision of the Constitution of the State
14 of Vermont that provides a private right of action, prescribed by Vermont
15 statute, or created by Vermont common law may bring an action for damages
16 or equitable relief against the law enforcement officer.

17 (c) An action brought pursuant to this section is not subject to:

18 (1) common law doctrines of immunity as a defense to liability;

19 (2) statutory immunities and statutory limitations on liability, damages,
20 or attorney’s fees;

21 (3) the provisions of chapter 189 of this title; or

1 (4) the provisions of 24 V.S.A. chapter 33, subchapter 4.

2 (d) A court may award reasonable attorney's fees and other litigation costs
3 reasonably incurred in any action brought under this section in which the
4 plaintiff substantially prevailed. When a judgment is entered in favor of a
5 defendant, a court may award reasonable attorney's fees and other litigation
6 costs reasonably incurred to the defendant for defending any claims the court
7 finds frivolous.

8 (e) Notwithstanding the provisions of 3 V.S.A. chapter 29, chapter 189 of
9 this title, or 29 V.S.A. chapter 55, a law enforcement agency shall indemnify
10 its law enforcement officer for any liability incurred and for any judgment or
11 settlement entered against the law enforcement officer for claims arising
12 pursuant to this section, except that if the law enforcement agency determines
13 that the law enforcement officer did not act in good faith and under reasonable
14 belief that the action was lawful, then the law enforcement officer is personally
15 liable and shall not be indemnified by the law enforcement agency for five
16 percent of the judgment or settlement or \$25,000.00, whichever is less.

17 (f) Notwithstanding any provision of this section to the contrary, to the
18 extent that a law enforcement officer's portion of a judgment or settlement is
19 uncollectable from the law enforcement officer, the law enforcement agency or
20 the law enforcement agency's insurance shall satisfy any such uncollected
21 amount of the judgment or settlement.

1 Sec. 4. 20 V.S.A. § 2366 is amended to read:

2 § 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARITAL
3 POLICING POLICY; ~~RACE~~ DATA COLLECTION

4 * * *

5 (e)(1) ~~On or before September 1, 2014, every~~ Every State, county, and
6 municipal law enforcement agency shall collect ~~roadside stop~~ data ~~consisting~~
7 ~~of the following:~~ concerning roadside stops and law enforcement encounters
8 resulting in officer-involved death or serious bodily injury.

9 (A) ~~the age, gender, and race of the driver;~~ Roadside stop data
10 collection shall include:

11 (i) the age, gender, and race of the driver;

12 (ii) the grounds for the stop;

13 (iii) the grounds for the search and the type of search conducted, if
14 any;

15 (iv) the evidence located, if any; and

16 (v) the outcome of the stop, including whether physical force was
17 employed or threatened during the stop, and if so, the type of force employed
18 and whether the force resulted in bodily injury or death, and whether:

19 (I) a written warning was issued;

20 (II) a citation for a civil violation was issued;

1 (III) a citation or arrest for a misdemeanor or a felony occurred;

2 or

3 (IV) no subsequent action was taken.

4 ~~(B) the grounds for the stop;~~ Law enforcement encounters involving
5 officer-involved death or serious bodily injury data collection shall include:

6 (i) the age, gender, and race of the decedent or injured person;

7 (ii) the grounds for the encounter;

8 (iii) the grounds for the search and the type of search conducted, if

9 any;

10 (iv) the evidence located, if any; and

11 (v) whether physical force was warned or threatened during the

12 encounter, and if so, the type of force employed and whether:

13 (I) a written warning was issued;

14 (II) a citation for a civil violation was issued;

15 (III) a citation or arrest for a misdemeanor or a felony occurred;

16 or

17 (IV) no subsequent action was taken.

18 ~~(C) the grounds for the search and the type of search conducted, if~~

19 any;

20 ~~(D) the evidence located, if any;~~

1 ~~(E) the outcome of the stop, including whether physical force was~~
2 ~~employed or threatened during the stop, and if so, the type of force employed~~
3 ~~and whether the force resulted in bodily injury or death, and whether:~~

4 ~~(i) a written warning was issued;~~

5 ~~(ii) a citation for a civil violation was issued;~~

6 ~~(iii) a citation or arrest for a misdemeanor or a felony occurred; or~~

7 ~~(iv) no subsequent action was taken.~~

8 * * *

9 (6) “Officer-involved death or serious bodily injury” means the serious
10 bodily injury or death of an individual resulting directly from an action of a
11 law enforcement officer while the law enforcement officer is on duty or while
12 the law enforcement officer is off duty but performing activities that are within
13 the scope of the officer’s law enforcement duties.

14 (7) “Serious bodily injury” has the same meaning as in 13 V.S.A.
15 § 1021.

16 * * *

17 Sec. 5. 20 V.S.A. § 2370 is added to read:

18 § 2370. INDEPENDENT INVESTIGATION INTO LAW ENFORCEMENT
19 USE OF FORCE RESULTING IN SERIOUS BODILY INJURY OR
20 DEATH

21 (a) Definitions. As used in this section:

1 (1) “Officer-involved death or serious bodily injury” means the death or
2 serious bodily injury of an individual that results directly from an action of a
3 law enforcement officer while the law enforcement officer is on duty or while
4 the law enforcement officer is off duty but performing activities that are within
5 the scope of the officer’s law enforcement duties.

6 (2) “Serious bodily injury” has the same meaning as in 13 V.S.A.
7 § 1021.

8 (b) Independent investigation. Whenever a law enforcement officer, acting
9 under authority of the State or within the scope of authority of a law
10 enforcement agency, uses physical force upon another person that results in
11 death or serious bodily injury to the person, the Criminal Justice Council shall
12 cause an independent investigation to be made to determine whether the use of
13 force by the law enforcement officer conformed with section 2368 of this title.

14 (1) The Council shall designate a three-member independent panel to
15 conduct the investigation. At least one member of the panel shall not be a
16 current or former law enforcement officer, and no member of the panel shall be
17 employed by, or have ever been employed by, the law enforcement agency that
18 employs the officer subject to the investigation.

19 (2) The law enforcement agency that employs the officer subject to the
20 investigation shall pay for the independent investigation.

21 (c) Report.

1 (1) The panel conducting an investigation pursuant to subdivision (b)(1)
2 of this section shall provide a report to the Criminal Justice Council as soon as
3 practicable after the incident.

4 (2) If the panel determines there is no basis to prosecute the law
5 enforcement officer or officers involved in the officer-involved death or
6 serious bodily injury, the panel shall release the report to the public.

7 Sec. 6. 20 V.S.A. § 2371 is added to read:

8 § 2371. LAW ENFORCEMENT OFFICER INFORMATION DATABASE

9 (a) Purpose. The purpose of this section is to create a law enforcement
10 officer information database that catalogues potential impeachment
11 information concerning law enforcement agency witnesses or affiants and
12 enables a prosecutor to disclose such information consistently and
13 appropriately under the obligations of *Giglio v. United States*, 405 U.S. 150
14 (1972), and its progeny.

15 (b) Database. The Vermont Criminal Justice Council shall maintain a
16 database cataloging any potential impeachment information concerning a law
17 enforcement officer. Potential impeachment information may include:

18 (1) any finding of misconduct that reflects upon the truthfulness or
19 possible bias of the law enforcement officer, including a finding of a lack of
20 candor during a criminal, civil, or administrative inquiry or proceeding;

1 (2) any past or pending criminal charge brought against the law
2 enforcement officer;

3 (3) any allegation of misconduct bearing upon truthfulness, bias, or
4 integrity that is the subject of a pending investigation;

5 (4) any prior findings by a judge that a law enforcement officer testified
6 untruthfully, made a knowing false statement in writing, engaged in an
7 unlawful search or seizure, illegally obtained a confession, or engaged in other
8 misconduct;

9 (5) any misconduct finding or pending misconduct allegation that either
10 cases a substantial doubt upon the accuracy of any witness, including witness
11 testimony, that a prosecutor intends to rely on to prove an element of any crime
12 charged, or that might have a significant bearing on the admissibility of
13 prosecution evidence;

14 (6) information that may be used to suggest that the law enforcement
15 officer is biased for or against a defendant; or

16 (7) information that reflects that the law enforcement officer's ability to
17 perceive and recall truth is impaired.

18 (c) Duty to report. A law enforcement agency's executive officer or
19 designee shall report any information required to be cataloged under this
20 section to the Council within 10 business days after discovering the
21 information.

1 (d) Accessibility. The database shall be accessible to the State’s Attorney
2 of any county of this State or designee and the Attorney General of this State
3 or designee for the purpose of complying with the disclosure obligations of
4 Giglio v. United States, 405 U.S. 150 (1972), and its progeny. This database
5 shall not be accessible to anyone not listed in this subsection.

6 (e) Confidentiality. The database, documents, materials, or other
7 information in possession or control of the Council that are obtained by or
8 reported to the Council under this section shall be confidential by law and
9 privileged, shall not be subject to subpoena, and shall not be subject to
10 discovery or admissible in evidence in any private civil action. The Council is
11 authorized to use the database, or related documents, materials, or other
12 information, in furtherance of the Council’s official duties. Unless otherwise
13 authorized by law, the Council shall not disclose the database or make related
14 documents, materials, or other information public without the prior written
15 consent of the law enforcement agency and the law enforcement officer.
16 Neither the Council nor any person who received documents, materials, or
17 other information shared under this section shall be required to testify in any
18 private civil action concerning the database or any confidential documents,
19 materials, or information subject to this section. Nothing in the section shall
20 exempt the Council, a State’s Attorney, or the Attorney General from
21 disclosing public records pursuant to 1 V.S.A. chapter 5, subchapter 3.

1 Sec. 7. 20 V.S.A. § 2401 is amended to read:

2 § 2401. DEFINITIONS

3 * * *

4 (4) “Effective internal affairs program” means that a law enforcement
5 agency does all of the following:

6 * * *

7 (B) Investigators. Assigns ~~an investigator~~ a three-member
8 investigative team to determine whether an officer violated an agency rule or
9 policy or State or federal law. The three-member investigative team shall be
10 composed of:

11 (i) at least one non-law enforcement civilian;

12 (ii) not more than one member of the team who is not a current or
13 former law enforcement officer; and

14 (iii) not more than one member of the team who is employed by,
15 or previously employed by, the law enforcement agency employing the officer
16 subject to the investigation.

17 * * *

18 (6)(A) “Valid investigation” means an investigation conducted pursuant
19 to a law enforcement agency’s established or accepted procedures.

20 (B) An investigation shall not be valid if:

1 (i) the agency has not adopted an effective internal affairs
2 program;

3 (ii) the agency refuses, without any legitimate basis, to conduct an
4 investigation;

5 (iii) the agency intentionally did not report allegations to the
6 Council as required;

7 (iv) the agency attempts to cover up the misconduct or takes an
8 action intended to discourage or intimidate a complainant; ~~or~~

9 (v) the agency's executive officer is the officer accused of
10 misconduct; or

11 (vi) the agency has not assigned investigators as defined under
12 subdivision (4)(B) of this section.

13 * * *

14 Sec. 8. 13 V.S.A. § 6608 is added to read:

15 § 6608. DISCLOSURE OF EVIDENCE FAVORABLE TO THE

16 DEFENDANT

17 (a) Purpose. The purpose of this section is to confirm the disclosure
18 obligations of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963),
19 *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny; to promote
20 regularity in disclosure practices; and to ensure timely disclosure of an

1 appropriate scope of exculpatory and impeachment information so as to ensure
2 that defendants are afforded due process and trials are fair.

3 (b) Disclosure required. As soon as practicable after any defendant enters a
4 plea of not guilty in a criminal case, the prosecutor in charge of the case shall
5 disclose any exculpatory information or material known to any member of the
6 prosecution team with respect to the defendant whether or not the defendant
7 requests such information or material. Such exculpatory material shall include
8 any information that tends to negate the guilt of the defendant as to the offense
9 charged, tends to reduce the sentence if the defendant is convicted of the
10 charged offense, and any material information that either casts a substantial
11 doubt upon the accuracy of any evidence, including witness testimony, that the
12 prosecutor intends to rely on to prove an element of any crime charged or
13 might have a significant bearing on the admissibility of prosecution evidence.
14 If prior to or during the trial of the case the prosecutorial team discovers
15 additional exculpatory or impeachment information or material, the prosecutor
16 shall promptly disclose the information or material to the defendant.

17 (c) As used in this section, “prosecution team” means the prosecutor and all
18 State and local law enforcement officers and other officials who have
19 participated in the investigation and prosecution of the offense or offenses with
20 which the defendant is charged.

1 Sec. 9. 13 V.S.A. § 6609 is added to read:

2 § 6609. CONFESSIONS BASED ON FALSE INFORMATION

3 PROHIBITED

4 (a) Evidence of a written or oral confession, admission, or other
5 statement made by a defendant with respect to the defendant's participation
6 or lack of participation in the offense charged may not be received in
7 evidence against the defendant in a criminal proceeding if such statement
8 was involuntarily made.

9 (b) A confession, admission, or other statement is involuntarily made by a
10 defendant pursuant to this section when it is obtained from the defendant by a
11 law enforcement officer acting in the officer's official capacity as law
12 enforcement who knowingly communicates false facts about evidence to the
13 defendant, and such false facts:

14 (1) undermine the reliability of the defendant's statement; or

15 (2) create a substantial risk that the defendant might falsely incriminate
16 themselves.

17 (c) As used in this section, "law enforcement officer" has the same
18 meaning as in 20 V.S.A. § 2351a.

19 Sec. 10. EFFECTIVE DATES

20 (a) Sec. 4 (law enforcement agencies; fair and impartial policing policy;
21 data collection) shall take effect on September 1, 2022.

1 (b) Sec. 5 (independent investigation into law enforcement use of force
2 resulting in serious bodily injury or death) shall take effect on October 1, 2022.

3 (c) Sec. 6 (law enforcement officer database) shall take effect on January 1,
4 2023.

5 (d) Sec. 8 (disclosure of evidence favorable to the defendant) shall take
6 effect on October 1, 2022.

7 (e) The remainder of this act shall take effect on July 1, 2022.